

Calendar No. 360109TH CONGRESS
2^D SESSION**S. 2271**

To clarify that individuals who receive FISA orders can challenge nondisclosure requirements, that individuals who receive national security letters are not required to disclose the name of their attorney, that libraries are not wire or electronic communication service providers unless they provide specific services, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 10 (legislative day, FEBRUARY 9), 2006

Mr. SUNUNU (for himself, Mr. CRAIG, Ms. MURKOWSKI, and Mr. HAGEL)
introduced the following bill; which was read the first time

FEBRUARY 13, 2006

Read the second time and placed on the calendar

A BILL

To clarify that individuals who receive FISA orders can challenge nondisclosure requirements, that individuals who receive national security letters are not required to disclose the name of their attorney, that libraries are not wire or electronic communication service providers unless they provide specific services, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “USA PATRIOT Act
3 Additional Reauthorizing Amendments Act of 2006”.

4 **SEC. 2. DEFINITION.**

5 As used in this Act, the term “applicable Act” means
6 the Act entitled “An Act to extend and modify authorities
7 needed to combat terrorism, and for other purposes.”
8 (109th Congress, 2d Session).

9 **SEC. 3. JUDICIAL REVIEW OF FISA ORDERS.**

10 Subsection (f) of section 501 of the Foreign Intel-
11 ligence Surveillance Act of 1978 (50 U.S.C. 1861), as
12 amended by the applicable Act, is amended to read as fol-
13 lows:

14 “(f)(1) In this subsection—

15 “(A) the term ‘production order’ means an
16 order to produce any tangible thing under this sec-
17 tion; and

18 “(B) the term ‘nondisclosure order’ means an
19 order imposed under subsection (d).

20 “(2)(A)(i) A person receiving a production order may
21 challenge the legality of that order by filing a petition with
22 the pool established by section 103(e)(1). Not less than
23 1 year after the date of the issuance of the production
24 order, the recipient of a production order may challenge
25 the nondisclosure order imposed in connection with such
26 production order by filing a petition to modify or set aside

1 such nondisclosure order, consistent with the requirements
2 of subparagraph (C), with the pool established by section
3 103(e)(1).

4 “(ii) The presiding judge shall immediately assign a
5 petition under clause (i) to 1 of the judges serving in the
6 pool established by section 103(e)(1). Not later than 72
7 hours after the assignment of such petition, the assigned
8 judge shall conduct an initial review of the petition. If the
9 assigned judge determines that the petition is frivolous,
10 the assigned judge shall immediately deny the petition and
11 affirm the production order or nondisclosure order. If the
12 assigned judge determines the petition is not frivolous, the
13 assigned judge shall promptly consider the petition in ac-
14 cordance with the procedures established under section
15 103(e)(2).

16 “(iii) The assigned judge shall promptly provide a
17 written statement for the record of the reasons for any
18 determination under this subsection. Upon the request of
19 the Government, any order setting aside a nondisclosure
20 order shall be stayed pending review pursuant to para-
21 graph (3).

22 “(B) A judge considering a petition to modify or set
23 aside a production order may grant such petition only if
24 the judge finds that such order does not meet the require-
25 ments of this section or is otherwise unlawful. If the judge

1 does not modify or set aside the production order, the
2 judge shall immediately affirm such order, and order the
3 recipient to comply therewith.

4 “(C)(i) A judge considering a petition to modify or
5 set aside a nondisclosure order may grant such petition
6 only if the judge finds that there is no reason to believe
7 that disclosure may endanger the national security of the
8 United States, interfere with a criminal, counterterrorism,
9 or counterintelligence investigation, interfere with diplo-
10 matic relations, or endanger the life or physical safety of
11 any person.

12 “(ii) If, upon filing of such a petition, the Attorney
13 General, Deputy Attorney General, an Assistant Attorney
14 General, or the Director of the Federal Bureau of Inves-
15 tigation certifies that disclosure may endanger the na-
16 tional security of the United States or interfere with diplo-
17 matic relations, such certification shall be treated as con-
18 clusive, unless the judge finds that the certification was
19 made in bad faith.

20 “(iii) If the judge denies a petition to modify or set
21 aside a nondisclosure order, the recipient of such order
22 shall be precluded for a period of 1 year from filing an-
23 other such petition with respect to such nondisclosure
24 order.

1 “(D) Any production or nondisclosure order not ex-
2 plicitly modified or set aside consistent with this sub-
3 section shall remain in full effect.

4 “(3) A petition for review of a decision under para-
5 graph (2) to affirm, modify, or set aside an order by the
6 Government or any person receiving such order shall be
7 made to the court of review established under section
8 103(b), which shall have jurisdiction to consider such peti-
9 tions. The court of review shall provide for the record a
10 written statement of the reasons for its decision and, on
11 petition by the Government or any person receiving such
12 order for writ of certiorari, the record shall be transmitted
13 under seal to the Supreme Court of the United States,
14 which shall have jurisdiction to review such decision.

15 “(4) Judicial proceedings under this subsection shall
16 be concluded as expeditiously as possible. The record of
17 proceedings, including petitions filed, orders granted, and
18 statements of reasons for decision, shall be maintained
19 under security measures established by the Chief Justice
20 of the United States, in consultation with the Attorney
21 General and the Director of National Intelligence.

22 “(5) All petitions under this subsection shall be filed
23 under seal. In any proceedings under this subsection, the
24 court shall, upon request of the Government, review ex

1 parte and in camera any Government submission, or por-
2 tions thereof, which may include classified information.”.

3 **SEC. 4. DISCLOSURES.**

4 (a) FISA.—Subparagraph (C) of section 501(d)(2)
5 of the Foreign Intelligence Surveillance Act of 1978 (50
6 U.S.C. 1861(d)(2)), as amended by the applicable Act, is
7 amended to read as follows:

8 “(C) At the request of the Director of the Federal
9 Bureau of Investigation or the designee of the Director,
10 any person making or intending to make a disclosure
11 under subparagraph (A) or (C) of paragraph (1) shall
12 identify to the Director or such designee the person to
13 whom such disclosure will be made or to whom such dislo-
14 sure was made prior to the request.”.

15 (b) TITLE 18.—Paragraph (4) of section 2709(e) of
16 title 18, United States Code, as amended by the applicable
17 Act, is amended to read as follows:

18 “(4) At the request of the Director of the Fed-
19 eral Bureau of Investigation or the designee of the
20 Director, any person making or intending to make
21 a disclosure under this section shall identify to the
22 Director or such designee the person to whom such
23 disclosure will be made or to whom such disclosure
24 was made prior to the request, except that nothing
25 in this section shall require a person to inform the

1 Director or such designee of the identity of an attor-
2 ney to whom disclosure was made or will be made
3 to obtain legal advice or legal assistance with respect
4 to the request under subsection (a).”.

5 (c) FAIR CREDIT REPORTING ACT.—

6 (1) IN GENERAL.—Paragraph (4) of section
7 626(d) of the Fair Credit Reporting Act (15 U.S.C.
8 1681u(d)), as amended by the applicable Act, is
9 amended to read as follows:

10 “(4) At the request of the Director of the Fed-
11 eral Bureau of Investigation or the designee of the
12 Director, any person making or intending to make
13 a disclosure under this section shall identify to the
14 Director or such designee the person to whom such
15 disclosure will be made or to whom such disclosure
16 was made prior to the request, except that nothing
17 in this section shall require a person to inform the
18 Director or such designee of the identity of an attor-
19 ney to whom disclosure was made or will be made
20 to obtain legal advice or legal assistance with respect
21 to the request for the identity of financial institu-
22 tions or a consumer report respecting any consumer
23 under this section.”.

24 (2) OTHER AGENCIES.—Paragraph (4) of sec-
25 tion 627(c) of the Fair Credit Reporting Act (15

1 U.S.C. 1681v(c)), as amended by the applicable Act,
2 is amended to read as follows:

3 “(4) At the request of the authorized govern-
4 ment agency, any person making or intending to
5 make a disclosure under this section shall identify to
6 the requesting official of the authorized government
7 agency the person to whom such disclosure will be
8 made or to whom such disclosure was made prior to
9 the request, except that nothing in this section shall
10 require a person to inform the requesting official of
11 the identity of an attorney to whom disclosure was
12 made or will be made to obtain legal advice or legal
13 assistance with respect to the request for informa-
14 tion under subsection (a).”.

15 (d) RIGHT TO FINANCIAL PRIVACY ACT.—

16 (1) IN GENERAL.—Subparagraph (D) of section
17 1114(a)(3) of the Right to Financial Privacy Act
18 (12 U.S.C. 3414(a)(3)), as amended by the applica-
19 ble Act, is amended to read as follows:

20 “(D) At the request of the authorized Govern-
21 ment authority or the Secret Service, any person
22 making or intending to make a disclosure under this
23 section shall identify to the requesting official of the
24 authorized Government authority or the Secret Serv-
25 ice the person to whom such disclosure will be made

1 or to whom such disclosure was made prior to the
2 request, except that nothing in this section shall re-
3 quire a person to inform the requesting official of
4 the authorized Government authority or the Secret
5 Service of the identity of an attorney to whom dis-
6 closure was made or will be made to obtain legal ad-
7 vice or legal assistance with respect to the request
8 for financial records under this subsection.”.

9 (2) FEDERAL BUREAU OF INVESTIGATION.—
10 Clause (iv) of section 1114(a)(5)(D) of the Right to
11 Financial Privacy Act (12 U.S.C. 3414(a)(5)(D)), as
12 amended by the applicable Act, is amended to read
13 as follows:

14 “(iv) At the request of the Director of
15 the Federal Bureau of Investigation or the
16 designee of the Director, any person mak-
17 ing or intending to make a disclosure
18 under this section shall identify to the Di-
19 rector or such designee the person to
20 whom such disclosure will be made or to
21 whom such disclosure was made prior to
22 the request, except that nothing in this
23 section shall require a person to inform the
24 Director or such designee of the identity of
25 an attorney to whom disclosure was made

1 or will be made to obtain legal advice or
2 legal assistance with respect to the request
3 for financial records under subparagraph
4 (A).”.

5 (e) NATIONAL SECURITY ACT OF 1947.—Paragraph
6 (4) of section 802(b) of the National Security Act of 1947
7 (50 U.S.C. 436(b)), as amended by the applicable Act, is
8 amended to read as follows:

9 “(4) At the request of the authorized investiga-
10 tive agency, any person making or intending to
11 make a disclosure under this section shall identify to
12 the requesting official of the authorized investigative
13 agency the person to whom such disclosure will be
14 made or to whom such disclosure was made prior to
15 the request, except that nothing in this section shall
16 require a person to inform the requesting official of
17 the identity of an attorney to whom disclosure was
18 made or will be made to obtain legal advice or legal
19 assistance with respect to the request under sub-
20 section (a).”.

21 **SEC. 5. PRIVACY PROTECTIONS FOR LIBRARY PATRONS.**

22 Section 2709 of title 18, United States Code, as
23 amended by the applicable Act, is amended by adding at
24 the end the following:

1 “(f) LIBRARIES.—A library (as that term is defined
2 in section 213(1) of the Library Services and Technology
3 Act (20 U.S.C. 9122(1)), the services of which include ac-
4 cess to the Internet, books, journals, magazines, news-
5 papers, or other similar forms of communication in print
6 or digitally by patrons for their use, review, examination,
7 or circulation, is not a wire or electronic communication
8 service provider for purposes of this section, unless the
9 library is providing the services defined in section
10 2510(15) (‘electronic communication service’) of this
11 title.”.

Calendar No. 360

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